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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

In re GALENA BIOPHARMA INC. DERIVATIVE LITIGATION	Case No.: 3:14-cv-00382-SI LEAD 3:14-cv-00514-SI 3:14-cv-00516-SI 3:15-cv-01465-SI
This Document Relates To: ALL ACTIONS.	**DECLARATION OF BRETT D. STECKER IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT, AWARD OF AGREED-TO ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES, AND INCENTIVE AWARDS**

I, Brett D. Stecker, do hereby declare:

1. I am a partner at The Weiser Law Firm, P.C. (the "Weiser Firm"), counsel for Co-Lead Plaintiff Jeffrey Klein ("Klein") in the above captioned consolidated stockholder derivative action (the "Action") brought on behalf of Galena Biopharma, Inc. ("Galena" or the "Company"). I have personal knowledge of the facts set forth herein based on my active participation in all material aspects of the initiation, prosecution, and settlement of the Action, except those stated upon my information and belief. If called upon, I could and would competently testify that the following facts are true and correct.

2. Unless otherwise indicated, all capitalized terms shall have the same definitions as set forth in the Amended Stipulation and Agreement of Settlement dated February 1, 2016 (the "Stipulation") and filed with the Court on the same day.

3. The Weiser Firm, along with the other firms serving as Plaintiffs' Counsel in the Action, has significant experience litigating complex stockholder actions, and I have almost exclusively devoted the last decade of my professional career to litigating stockholder derivative actions. Based on my own experience in this area of the law, I am very familiar with the legal issues associated with prosecuting stockholder derivative claims, prevailing corporate governance trends, and other "best practices" in the context of corporate governance. The Weiser Firm has been appointed lead or co-lead counsel in derivative cases nationwide, and several of our cases have either established relative precedent or have expanded stockholders' rights under existing law.

4. I submit this declaration in support of Plaintiffs' Unopposed Motion for Final Approval of Proposed Settlement, Award of Agreed-to Attorneys' Fees and Reimbursement of

Expenses, and Incentive Awards (the "Motion"), which seeks an order granting final approval of the Settlement embodied in the Stipulation, the agreed-to Fee Award for Plaintiffs' Counsel, and the Incentive Awards for Plaintiffs Klein and Pratik Rathore ("Rathore").

5. On February 4, 2016, the Court entered the Preliminary Approval Order preliminarily approving the Settlement and approving the proposed Notice and Summary Notice. ECF No. 115. The Preliminary Approval Order also established an April 7, 2016 deadline for any Current Galena Stockholder to object to the Settlement, Fee Award, or Incentive Awards. Pursuant to the terms of the Stipulation, and in accordance with the Preliminary Approval Order, Galena: (i) filed with the SEC a Form 8-K on February 16, 2016 that contains the contents of the Summary Notice, attached a copy of the Stipulation to the 8-K and provided a link in the 8-K to the Stipulation and Notice that is posted on the Investor Relations portion of Galena's website; (ii) issued a press release that contains the contents of the Summary Notice on February 16, 2016; and (iii) published a copy of the Summary Notice one time in *Investor's Business Daily*, *The Oregonian*, and *The Wall Street Journal* on February 17, 2016. As of the date of this submission, Plaintiffs' Counsel are unaware of any objections to the Settlement, the Fee Award, or the Incentive Awards.

6. As the Court is aware, the Settlement also resolves the related derivative litigation pending in Multnomah County Circuit Court captioned *Fagin v. Ahn, et al.*, No. 140202384 (Or. Cir. Ct.) and *Zhang v. Hillsberg, et al.*, No. 140403987 (Or. Cir. Ct.). In a February 4, 2016 letter, the plaintiffs to those actions informed this Court that they "agreed to coordinate [their] efforts with [Plaintiffs]" in this Action and supported Plaintiffs' motion for preliminary approval.

7. The Settlement is an excellent result for Galena and Current Galena Stockholders. The Settlement provides Galena with over $16.3 million worth of financial consideration, including, among other things, a $15 million payment by Galena's D&O insurance carriers and the cancellation of the 1.2 million improperly-granted stock options received by the director defendants. Notably, this payment will not be reduced as a consequence of any fee award, which is being paid on top of the payment to the Company. Further, the Settlement requires the implementation of significant, valuable reforms to Galena's corporate governance practices and policies which are specifically designed to address the allegations of wrongdoing that gave rise to this Action, and to improve the Company's corporate governance overall. Thus, the Settlement provides relief to Galena which is immediate in terms of substantial financial relief, as well as relief which is designed to be long-lasting in terms of substantial corporate governance reforms.

8. In this regard, derivative litigation is quite different than class action litigation; in some regards it may be easier for a board of directors to agree to pay money to settle a class action settlement or a judgment than it is for them to accept corporate governance measures that affect the inter-workings of the board and/or the corporation for years to come. A board that agrees to a derivative settlement that includes corporate governance relief (such as this Settlement) must live with its terms long after a check is written; thus, therapeutic relief in the form of meaningful corporate governance reforms in a derivative action can be even more difficult to achieve than a monetary settlement. Here, Galena will receive both financial relief and meaningful corporate governance relief as a result of this Settlement, and in my opinion, the

success of the Action vividly illustrates what engaged stockholders and competent counsel can accomplish.

9. As set forth below, I, on behalf of Plaintiffs' Counsel, respectfully submit that the Settlement is an outstanding result for the Company and Current Galena Stockholders, and is eminently "fair, reasonable, and adequate" based upon the substantial benefits obtained for Galena in the Settlement when weighed against Defendants' defenses and risks involved in proving liability and damages as well as the further risk, delay and expense had the Action continued to trial.

10. Indeed, the Parties have agreed that the Settlement confers a substantial benefit to Galena and Current Galena Stockholders, and I respectfully request the Court enter the [Proposed] Final Order and Judgment, which would: (1) finally approve the Settlement; (2) approve the agreed-to Fee Award of $5 million in attorneys' fees and expenses; and (3) approve the nominal Incentive Awards for Plaintiffs Klein and Rathore.

PRELIMINARY STATEMENT

11. As detailed herein, the Settlement, as reflected in the Stipulation, provides that as a result of the filing, prosecution and Settlement of the Action, Galena received the payment of $15 million by its D&O insurance carriers. In addition, as part of the Settlement, the 1.2 million stock options Plaintiffs alleged were improperly granted to the director defendants have been cancelled in their entirety. Further, defendant Mark J. Ahn ("Ahn"), Galena's former Chief Executive Officer ("CEO"), forfeited over $800,000 of contractual severance payments due to him and over 1.1 million stock options with an intrinsic value of approximately $503,062. In total, the Settlement provides Galena with over $16.3 million of financial consideration.

12. Further, the Settlement requires the implementation of significant reforms to Galena's corporate governance practices and policies which are designed to make Galena's officers and directors more effective and responsive fiduciaries. These include reforms to Galena's stock option granting practices, the appointment of a new independent director, reforms to the Board and management structure and policies, the adoption of a formal Enterprise Risk Management ("ERM") program and other reforms to Galena's corporate governance practices. In sum, the Settlement is an outstanding package of relief that provides Galena with substantial financial benefits as well as significant non-monetary benefits which will provide value to Galena and its stockholders for years to come.

13. This declaration sets forth: (i) the nature of the claims asserted in the Action; (ii) the principal proceedings to date; (iii) the legal services provided by Plaintiffs' Counsel; (iv) the negotiations leading to the Settlement; (v) the reasons why the Settlement is fair, reasonable, and adequate, and in the best interests of Galena and Current Galena Stockholders; (vi) the reasons why the agreed-upon Fee Award is fair and reasonable and should be approved; and (vii) the reasons why the nominal Incentive Awards are fair and reasonable and should be approved.

14. From the outset, Plaintiffs' Counsel carefully and thoroughly investigated the facts and circumstances related to the Action. The investigation included inspecting, analyzing, and reviewing the Company's public filings with the SEC, press releases, announcements, transcripts of investor conference calls, and news articles, and researching the applicable law with respect to the claims asserted in the Action and the potential defenses thereto, in order to determine how best to protect the interests of the Company and its stockholders.

15. Prior to, upon the commencement of, and at all times during the Action, Plaintiffs and Plaintiffs' Counsel vigorously and diligently pursued the interests of Galena and Current Galena Stockholders. Among other things, Plaintiffs' Counsel collectively: (1) sent inspection demands pursuant to 8 *Del. C.* § 220 ("Section 220")[1]; (2) reviewed approximately 4,660 pages of non-public documents produced pursuant to the 220 Demands; (3) drafted initial complaints, a consolidated complaint, an amended complaint and a second amended complaint; (4) drafted oppositions to two motions to dismiss and two motions to stay; (5) presented oral argument in opposition to a motion to dismiss and a motion to stay; (6) drafted two settlement demands;[2] (7) drafted a mediation statement; (8) attended a full-day mediation; and (9) reviewed nearly 24,000 non-public documents (totaling approximately 53,000 pages) produced by Galena in advance of mediation.

16. As demonstrated herein and as set forth in the Stipulation and the Motion, the Parties have engaged in extensive settlement negotiations, which culminated in the Settlement. The arm's-length settlement negotiations that led to the Settlement included numerous written exchanges and telephonic conferences amongst counsel for the Parties.

17. The Settlement was facilitated by the Honorable Layn R. Phillips (Ret.), an experienced and nationally renowned mediator in the area of stockholder litigation. The full-day Mediation took place in New York City on September 19, 2015. While the Mediation did not result in a resolution of the Action at that session, the Parties' detailed submissions and other

[1] The demands pursuant to Section 220 were issued by counsel for Plaintiffs Fuhs and Spradling in March 2014. Plaintiff Fuhs also filed an action in March 2014 in the Delaware Court of Chancery to enforce his right to inspect the demanded books and records (the "220 Action").

[2] The first settlement demand was issued solely by the Oregon Plaintiffs in October 2014. The second settlement demand was issued on behalf of all Plaintiffs in May 2015.

communications in connection with the Mediation served as the basis for subsequent negotiations, overseen by Judge Phillips. With the substantial assistance of Judge Phillips, the Parties reached an agreement in principle to settle the Oregon Action and executed a term sheet dated December 4, 2015. The Parties subsequently negotiated and executed the Stipulation on February 1, 2016.

18. Settlement negotiations were protracted, difficult, and marked at times by serious differences of opinion, although they were always professional. The negotiations were conducted by experienced, highly sophisticated counsel with a firm understanding of the strengths and weaknesses of their clients' respective claims and defenses.

19. As set forth below, Plaintiffs' Counsel also seek final approval of the agreed-to Fee Award in the amount of $5 million. The Fee Award was only negotiated after the Parties completed their settlement negotiations, and it is the product of a "mediator's proposal" made by Judge Phillips that was accepted by the Parties. As set forth in the Stipulation, with the approval of the current Board in an exercise of its independent business judgment, Galena has agreed to pay the Fee Award based on the substantial benefits conferred upon the Company and Current Galena Stockholders by the Settlement. I respectfully submit that, absent some strong contrary evidence, the Court should respect the Board's valuation of the services the Company received in the Action.

20. Aside from the Board's approval, I respectfully submit that the Fee Award is eminently fair and reasonable under relevant precedent, including, but not limited to: (a) the common fund doctrine; (b) the substantial benefit doctrine crafted by the United States Supreme

Court in the seminal *Mills* case;[3] (c) the risks Plaintiffs' Counsel incurred in prosecuting the Action; and (d) the contingent nature of Plaintiffs' Counsel's undertaking in the Action.

21. I also respectfully submit that Plaintiffs' Counsel should be granted permission to allocate the Incentive Awards, payments in the amount of $5,000 each from the Fee Award, to Plaintiffs Klein and Rathore. These nominal Incentive Awards should be approved in light of the significant benefits Plaintiffs Klein and Rathore helped to create for the Company and all Current Galena Stockholders.

PROCEDURAL HISTORY

The Oregon Action

22. The Oregon Action was initiated in this Court in March 2014 when the Oregon Plaintiffs filed complaints on behalf of Galena alleging breaches of fiduciary duty against the Board, which were later consolidated on April 11, 2014. Defendants filed the Motion to Dismiss the Oregon Action on April 18, 2014, requesting that the case be transferred to the Delaware Court of Chancery based on a forum selection clause purportedly adopted by the Board. Defendants thereafter withdrew the Motion to Dismiss.

23. At the Parties' request, the Court set a briefing schedule for the Oregon Plaintiffs' amended complaint and Defendants' motion to dismiss. On June 10, 2014, the Oregon Plaintiffs filed an amended complaint. On August 11, 2014, Galena announced that a Special Committee, which had been appointed on February 17, 2014, had completed an investigation. Galena also disclosed that the Board, on July 21, 2014, had appointed Irving M. Einhorn ("Einhorn"), who had served on the Special Committee, as a one-person SLC "in order to make any and all

[3] *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970).

determinations with respect to the complaints and take all actions he deems necessary or appropriate regarding the claims made in the complaints." Galena next filed the Motion to Stay on September 11, 2014, contending that the Oregon Action should be stayed so that the newly empowered SLC could investigate and decide whether to pursue the Oregon Plaintiffs' claims. Oregon Plaintiffs opposed the Motion to Stay and argued, *inter alia*, that Einhorn lacked the independence required of a single member SLC because he was a member of the previously constituted Special Committee that completed an investigation into the alleged wrongdoing, and in that role he had already reached a conclusion in connection with Oregon Plaintiffs' claims.

24. On October 22, 2014, the Court denied the Motion to Stay. Defendants filed a motion for reconsideration on October 28, 2014, which the Court also denied.

25. The Court ordered that Defendants respond to Oregon Plaintiffs' amended complaint within two weeks from the Court's denial of the motion for reconsideration. Defendants again moved to stay the Oregon Action, filing the Second Motion to Stay, pending the resolution of the Federal Securities Action[4] and in deference to the Delaware Action. Simultaneously, Defendants filed the Second Motion to Dismiss the Oregon Action which sought dismissal based on Defendants' arguments that plaintiffs failed to plead their allegations with the required level of particularity and to state a claim.

26. On November 25, 2014, Oregon Plaintiffs filed their opposition to the Second Motion to Stay, and on December 15, 2014, they filed their opposition to the Second Motion to Dismiss. The Court held oral argument on both motions on January 23, 2015, and on February 4, 2015, entered orders and opinions granting in part and denying in part both the Second Motion

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[4] The Federal Securities Action refers to the case currently pending in the this Court captioned *In Re Galena Biopharma, Inc. Secs. Litig.*, No 14-cv-00367-SI (D. Or.).

to Dismiss and Second Motion to Stay. In response to the Second Motion to Stay, the Court declined to stay the Oregon Action in favor of the related Delaware Action but temporarily stayed discovery pending the Court's decision on the motion to dismiss in the Federal Securities Action. The Court also declined to dismiss the majority of the claims challenged in the Second Motion to Dismiss and gave the Oregon Plaintiffs leave to amend the claims that were dismissed. The Oregon Plaintiffs filed their Verified Second Amended Consolidated Shareholder Derivative Complaint on March 6, 2015.

The Delaware Action

27. In March 2014, the Delaware Plaintiffs each made a demand pursuant to Section 220 to inspect certain of Galena's books and records related to stock option grants made to certain Galena insiders in November 2013, stock sales made by certain Galena insiders in January 2014, and related matters. On March 18, 2014, Plaintiff Fuhs filed the 220 Action in the Delaware Court of Chancery to enforce his right to inspect the demanded books and records. On or about April 10, 2014, the parties executed a confidentiality agreement, and from April 14, 2014 to May 29, 2014, Galena produced on a rolling basis documents responsive to the 220 Demands. Ultimately, Galena produced approximately 4,660 pages of documents.

28. On June 20, 2014, the Delaware Plaintiffs filed a Verified Stockholder Derivative Complaint in the Delaware Court of Chancery on behalf of Galena and alleging breaches of fiduciary duty by Galena's officers and directors. On August 12, 2014, Galena filed the Delaware Stay Motion, seeking to stay the litigation pending the results of the SLC investigation. The Delaware Plaintiffs stipulated to a stay of the Delaware Action until November 24, 2014. On October 13, 2014, the Delaware Court of Chancery granted the Stay Order. The Stay Order

specifically reserved the Delaware Plaintiffs' right to seek to lift the stay if any other related Oregon derivative actions were not also stayed.

29. Accordingly, on November 14, 2014, after this Court declined to stay the proceedings before it based on the SLC investigation, the Delaware Plaintiffs filed a motion seeking to vacate the stay of the Delaware Action under their reservation of rights in the Stay Order. Based on subsequent rulings by this Court, the Delaware Plaintiffs agreed to voluntarily dismiss the Delaware Action and to file a complaint in this Court in order to coordinate their efforts with Oregon Plaintiffs.

Coordination Between the Oregon Action and the Delaware Action

30. After voluntarily dismissing the Delaware Action in February 2015, on August 4, 2015, Plaintiffs Fuhs and Spradling filed a Verified Stockholder Derivative Complaint and an Unopposed Motion to File Verified Stockholder Derivative Complaint Under Seal in order to consolidate their action with the Oregon Action. The Court consolidated the pending actions on August 19, 2015, and, on August 31, 2015, the Court granted Plaintiffs' Unopposed Motion to File the operative Complaint.

31. Plaintiffs filed the Complaint on August 28, 2015 which alleges, *inter alia*, that Galena's directors and senior executive officers unlawfully abused their positions as fiduciaries of the Company for their own personal financial gain. Specifically, the Complaint alleges that the Individual Defendants manipulated the Company's stock price and artificially pumped it up in order to later dump a significant portion of their Galena stock, including improperly granted stock option awards, when Galena stock was trading at artificially inflated prices. The Complaint also alleges that the Individual Defendants improperly used inside information to

spring-load stock options to themselves, *i.e.*, options that are granted just prior to a company's release of material information reasonably expected to drive the market price of the shares higher, and in their haste to grant the options, failed to comply with the requirements of the Delaware General Corporation Law ("DGCL"). The Complaint alleges seven counts for: (1) breach of fiduciary duty for disseminating false and misleading information; (2) invalidity of stock options; (3) breach of fiduciary duty for insider selling and/or granting the spring-loaded stock option awards; (4) unjust enrichment in connection with insider selling and/or receipt of the spring-loaded stock options; (5) breach of fiduciary duty in connection with the enactment and attempted enforcement of the forum selection clause; (6) breach of fiduciary duty in connection with the excessive 2013 stock option awards and cash compensation to the outside directors; and (7) unjust enrichment in connection with the excessive 2013 stock option awards.

Settlement Negotiations

32. On May 8, 2015, in advance of the Mediation to be held before Judge Phillips, Plaintiffs sent a joint settlement demand to Defendants. As a precondition to attending the Mediation, Plaintiffs required Defendants to produce certain non-public documents, including documents produced to the SEC and reviewed by the Board's Special Committee and SLC. As a result, Defendants produced nearly 24,000 documents (totaling approximately 53,000 pages) to Plaintiffs.

33. The full-day Mediation took place in New York City on September 19, 2015. While the Mediation did not result in a resolution of the Action at that session, the Parties' submissions and other communications in connection with the Mediation served as the basis for subsequent negotiations, overseen by Judge Phillips. With the substantial assistance of Judge

Phillips, the Parties reached an agreement in principle to settle the Oregon Action and executed a term sheet dated December 4, 2015. The Parties subsequently negotiated and executed the Stipulation on February 1, 2016.

THE SETTLEMENT TERMS

34. Through the Settlement, Plaintiffs achieved both substantial financial consideration and material corporate governance reforms. Thus, the Company is not only receiving immediate and substantial monetary relief; it is also receiving valuable, long-lasting relief based on the robust Reforms. In my experience, most derivative settlements do not have both a financial component and a governance component.

35. The Settlement includes several valuable financial components. First, the Settlement requires a $15 million cash payment to be paid to Galena by the Individual Defendants' D&O insurance carriers. *See* Stipulation ¶2.1. Second, the Settlement requires the cancellation of the 1.2 million challenged stock options granted to director defendants Hillsberg, Kriegsman, Nisi, Galliker, Chin and Ashton. *Id*. at ¶2.1. Third, defendant Ahn, Galena's former CEO, forfeited the following benefits as part of the Settlement: (1) $600,000 in salary; (2) $250,000 in bonus; (3) 1,181,250 stock options with an intrinsic value of approximately $503,062 (as of August 21, 2014, the date of the public announcement of Ahn's resignation); and (4) health related costs valued between $24,000 and $30,000. *Id*. at ¶2.4. Finally, as part of the Settlement, the Company agreed to cancel the outstanding stock options awarded to Lidingo Holdings LLC in August 2013. *Id*. Based on our experience in the derivative area generally, achieving such substantial monetary relief in a derivative action is atypical as most derivative actions settle exclusively for therapeutic relief.

36. Here, in addition to the significant immediate financial benefits Galena will receive as a result of the Settlement, the Settlement also provides for valuable, long-term corporate governance reforms which are specifically tailored to address the allegations in the Action and to improve Galena's overall corporate governance structure. Defendants have agreed that the Reforms confer a material benefit on Galena and Current Galena Stockholders. The Reforms include:

Reforms to Galena's Option Granting Practices

37. The Settlement includes significant reforms to the Company's stock option granting practices which are specifically designed to prevent the type of wrongdoing that gave rise to the Action in the first place. For example, the Settlement requires options to be granted on pre-set dates that will be determined prior to the end of the first quarter of the calendar year in which the options are to be granted, and the Compensation Committee must disclose to Galena stockholders the methods used to determine those pre-set dates in the fiscal year's proxy statement in which the method is established. *See* Stipulation, Exhibit A at I.A. The granting of stock options on pre-set dates will not only help prevent the spring-loading of stock options in the future, but also will help prevent other types of potential misconduct relating to the manipulation of option grants. The other reforms to the Company's option granting practices include, among other things:

- Prohibiting stock option grants from being made through unanimous written consent (Stipulation, Exhibit A at I.B);
- Requiring the Compensation Committee to determine grantees, amounts, dates and prices of stock options and prohibiting changes after the grant is approved (Stipulation, Exhibit A at I.C);

- Requiring outside counsel or the Company's General Counsel to participate in any Board or committee meetings at which stock options are granted and meeting minutes to be drafted and circulated within 30 days following the meeting (Stipulation, Exhibit A at I.D);
- Requiring the exercise price of stock options to be no less than the Company's closing stock price on the grant date (Stipulation, Exhibit A at I.E);
- Prohibiting the lowering of exercise prices or exchanging options with lower exercise prices (Stipulation, Exhibit A at I.F);
- Requiring strict record keeping with respect to option grants (Stipulation, Exhibit A at I.G); and
- Prohibiting the right to extend vesting of stock options or otherwise modify the terms of the grant unless specific criteria are met (Stipulation, Exhibit A at I.H).

Reforms to Galena's Corporate Governance Practices and Policies

38. The Settlement further includes reforms to various segments of Galena's corporate governance practices and policies. For example, the Settlement implements changes at the Board level, including: (1) the appointment of one new independent director to the Board as of the 2016 Annual Meeting (Stipulation, Exhibit A at II.N); (2) revisions to the Audit Committee Charter (Stipulation, Exhibit A at II.D and I); and (3) the appointment of a new chair of the Compensation Committee (Stipulation, Exhibit A at III.E). As a result of the Settlement, Board approval is required for all contracts greater than $200,000 as the matrix for the authority to conduct business was modified (Stipulation, Exhibit A at III.A).

39. The Settlement also includes reforms to Galena's management including the appointment of a new CEO (Stipulation, Exhibit A at III.D) and the hiring of a new General Counsel, Tom Knapp, (Stipulation, Exhibit A at III.C). The new General Counsel has additional oversight responsibilities as a result of the Settlement, including serving as Galena's Trading

Compliance Officer pursuant to Galena's Insider Trading Policy (Stipulation, Exhibit A at II.A-B and F).

40. Finally, the Settlement requires reforms to Galena's Insider Trading Policy (Stipulation, Exhibit A at II.A-B), the adoption of a formal Enterprise Risk Management program, which will identify and address corporate risk (Stipulation, Exhibit A at II.C), training for personnel in the areas associated with IR/PR cross-functionality (Stipulation, Exhibit A at II.J), the retention of an independent Compensation Consultant (Stipulation, Exhibit A at II.L) and the deletion of Galena's forum selection clause in its bylaws (Stipulation, Exhibit A at II.O).

OTHER FACTORS TO BE CONSIDERED IN SUPPORT OF THE SETTLEMENT

Plaintiffs' Counsel Negotiated the Settlement at Arm's-Length

41. Plaintiffs' Counsel advised the Plaintiffs to enter into the Stipulation only after thoroughly investigating the claims, carefully weighing all of the Plaintiffs' options, and participating in extensive follow-up negotiations. As detailed above, the terms of the Settlement were negotiated by the Parties at arm's-length, and reached only after extensive, protracted settlement discussions.

The Probability of Success on the Merits of the Action

42. As discussed in the Motion, while Plaintiffs' Counsel believed that Plaintiffs' claims were strong, we understood that Plaintiffs confronted significant risks in establishing liability and damages in the Action. Balancing these risks against the known benefits of Settlement weighed strongly in favor of resolving the claims on the terms set forth in the Stipulation, especially in light of the costs to the Company of continued prosecution of the Action.

43. Plaintiffs' Counsel believed, and continues to believe, that the substantive claims for relief asserted in this Action were meritorious, but achieving a judgment (much less one providing for benefits comparable to the substantial financial relief achieved and the comprehensive Reforms) was by no means assured. Although the Court denied Defendants' motions to dismiss, Plaintiffs still had to prove the merits of their claims. Plaintiffs still would have had to overcome the protections afforded the Board under the so-called "business judgment rule." The business judgment rule generally affords a strong presumption that, in making a disinterested business decision, the directors of a Delaware corporation acted on an informed basis, in good faith, and with the honest belief that the action taken was in the best interests of the corporation. *In re Walt Disney Co. Deriv. Litig.*, 907 A.2d 693, 746-47 (Del. Ch. 2005). Although Plaintiffs believed in their arguments against the protections afforded by the rule with respect to the acts challenged in the Action, the prospect that the Individual Defendants could have been shielded by this protective umbrella made establishing liability in the Action uncertain. Defendants would have raised the rule as an affirmative defense at both summary judgment and trial; in short, it would have been an anchor around Plaintiffs' necks throughout the duration of the Action,[5] and the uncertainty surrounding the application of the rule to the facts alleged was a significant reason why Plaintiffs choose to settle at this time on the terms in the Stipulation.

44. Further, Plaintiffs faced tremendous difficulties in light of the Company's exculpatory provision pursuant to Delaware law. Where, as here, such a broad exculpatory

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[5] One way that directors afford themselves the protections afforded by the business judgment rule is to engage experts and/or counsel, and generally, directors are entitled to rely upon competent counsel. *Weiss v. Swanson*, 948 A.2d 433, 447 (Del. Ch. 2008) ("[f]uture proceedings may establish that the Director Defendants, reasonable relying on competent counsel…").

clause applies, "plaintiffs cannot sustain their complaint even by pleading facts supporting an inference of gross negligence; they must plead a non-exculpated claim." *In re Lear Corp. S'holder Litig.*, 967 A.2d 640, 648 (Del. Ch. 2008).

45. Beyond the hurdle of establishing the Individual Defendants' liability for their alleged wrongdoing, Plaintiffs faced considerable uncertainty with respect to establishing damages to Galena. Upon Plaintiffs' establishing liability, the issue of damages to Galena would have been hotly disputed and clearly would have been the subject of expert testimony proffered by all parties. The damages assessments of experts retained by the parties would surely vary substantially, and the assessment of this crucial element of Plaintiffs' claims would be reduced at trial to a "battle of the experts."

46. Indeed, had the Action gone to trial, Plaintiffs would have faced significant risks proving their insider trading and spring-loading option claims. With respect to the spring-loading option claims, as to the director defendants (Ahn, Ahston, Hillsberg, Chin, Galliker, Kriegsman and Nisi), the issue would be whether the option grants were entirely fair to Galena. *See, e.g.*, *In re Tyson Foods, Inc. Consol. S'holder Litig.*, 919 A.2d 563, 592-93 (Del. Ch. 2007). As to the officer defendants who were not Board members and did not approve spring-loaded stock options (Schwartz and Dunlap), Plaintiffs would be required to prove they acted in bad faith by receiving spring-loaded stock options, which would have been difficult as these individuals were not involved in approving the awards. As to the Board members who approved and received the challenged options, the Settlement provides complete relief.

47. It is far from certain that a jury would have disregarded the Individual Defendants' experts' opinions. Indeed, a jury might be swayed by defense experts seeking to

establish that damages were caused by factors other than the Individual Defendants' wrongdoing, or, alternatively, trying to minimize the amount of the Company's damages. Conceivably, a jury could find that there were no damages or that the damages were a mere fraction of the amount that Plaintiffs contended.

48. While it is clear to Plaintiffs that Galena suffered ***losses*** as a result of the conduct challenged in the Action, the question of whether Galena suffered legal, non-exculpated ***damages*** is a much more complicated question. Thus, complex damages issues versus the known benefits of Settlement clearly weigh in favor of its final approval.

49. The inherently unpredictable risks of proceeding with the Actions, given all of the circumstances, provided a daunting counterpoint to protracted litigation, especially in light of the valuable financial corporate governance relief obtained as a result of this Settlement. Thus, in our view, there were numerous "legal" and "practical" considerations which led us to conclude that the Settlement was the best option for all Parties.

The Judgment of the Settling Parties That the Settlement Is Fair and Reasonable Provides Additional Support for Approval of the Settlement

50. Another factor supporting final approval of the Settlement is the judgment of the Parties that the Settlement is fair and reasonable. As outlined above, the Settlement is the product of extensive arm's-length negotiations between sophisticated adversaries with significant experience in shareholder derivative actions and other complex litigation with the help of an experienced mediator. Plaintiffs' Counsel strongly believes that the Settlement represents the best possible resolution on behalf of the Company and Current Galena Stockholders.

51. This conclusion by Plaintiffs' Counsel was based in part on: (a) Plaintiffs' Counsel's investigation; (b) the substantial benefits of the Settlement when weighed against the

risk, delay, expense, and uncertainty of continued litigation of the Actions; and (c) Plaintiffs' Counsel's past experience in litigating similar complex derivative actions.

52. To be sure, the financial relief has arrived at a critical time for the Company. On February 25, 2016, the Company disclosed it received a notice of delisting from NASDAQ because its stock price has fallen below $1.00 for the previous 30 consecutive business days and the Company is therefore noncompliant. The Company has 180 calendar days, or until August 22, 2016, to regain compliance. The Company can regain compliance with the $1.00 minimum bid listing requirements of the NASDAQ Capital Market if the closing bid price of the Company's common stock is $1.00 per share or higher for a minimum of ten consecutive business days during this initial 180-day compliance period. A cash infusion at this stage could ensure that Galena regains eligibility and maintains access to the capital markets. In total, the Settlement provides Galena with financial consideration worth over $16.3 million, which represents approximately 43% of the Company's reported cash and cash equivalents as of February 2016.

53. The Company, the Defendants, and Plaintiffs have independently considered the terms of the Stipulation and have all acknowledged that the Settlement is fair, reasonable, adequate, and has benefitted or will materially benefit Galena and Current Galena Stockholders.

The Settlement Was Negotiated by the Parties With a Thorough Understanding of the Strengths and Weaknesses of the Parties' Respective Positions

54. The stage of the proceedings and the amount of discovery completed is another factor which courts (particularly in the Ninth Circuit) consider in determining the fairness, reasonableness, and adequacy of a settlement. The Parties litigated this Action through several attempts by Defendants to stay or dismiss the Action and conducted meaningful document

discovery. Indeed, both the knowledge of Plaintiffs' Counsel and the proceedings themselves have reached a stage where an intelligent evaluation of the Action and the propriety of Settlement can be made.

55. Here, Plaintiffs' Counsel's investigation, which included the review of thousands of non-public, internal Galena documents, arm's-length settlement discussions, and Plaintiffs' Counsel's past experience in litigating complex derivative actions, provided Plaintiffs with a clear picture of the strength and weaknesses of the Action, but also of the sufficiency of the legal and factual defenses that Defendants would raise if litigation were to continue. Having enough information to properly evaluate the claims and defenses to be asserted, Plaintiffs have managed to resolve the Action on a highly favorable basis to the Company and Current Galena Stockholders without the substantial expense, risk, delay, and uncertainty of continued litigation. Thus, the Parties reached an agreement to settle the Action at a point when they had an adequate understanding of the legal and factual issues surrounding the Action.

The Reaction of Current Galena Stockholders Supports the Settlement

56. Pursuant to the terms of the Stipulation, and in accordance with the Preliminary Approval Order, Galena: (i) filed with the SEC a Form 8-K on February 16, 2016 that contains the contents of the Summary Notice, attached a copy of the Stipulation to the 8-K and provided a link in the 8-K to the Stipulation and Notice that is posted on the Investor Relations portion of Galena's website; (ii) issued a press release that contains the contents of the Summary Notice on February 16, 2016; and (iii) published a copy of the Summary Notice one time in *Investor's Business Daily*, *The Oregonian*, and *The Wall Street Journal* on February 17, 2016. The Notice and Summary Notice set forth, *inter alia*, the date and location of the final Settlement Hearing,

the history of the Action, the Parties' contentions, the reasons for the Settlement, the claims that will be released if the Settlement is approved, the Fee Award and Incentive Awards sought by Plaintiffs' Counsel, the procedure for objecting to the Settlement, including objecting to the Fee Award and Incentive Awards, and the deadline to file such objections. *See* Preliminary Approval Order, Exhibits C and D. As of the date of this submission, Plaintiffs' Counsel is unaware of any objections to the Settlement (or to the Fee Award or Incentive Awards). I respectfully submit that this is a strong indicator of their fairness and reasonableness.

57. Further, here the notice period is fifty-two (52) days, a period long enough to easily satisfy federal notions of due process. *See U.S. v. Alabama*, 271 Fed. Appx. 896, 901 (11th Cir. 2008) (two week notice period was sufficient); *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975) (19 day notice period sufficient); *Greenspun v. Bogan*, 492 F.2d 375, 378 (1st Cir. 1974) (24 day notice period sufficient).

THE AGREED-UPON FEE AWARD SHOULD BE APPROVED

58. The agreed-to Fee Award is fair and reasonable in light of the substantial benefits conferred upon Galena and Current Galena Stockholders as a result of the Settlement and should be finally approved. Plaintiffs' Counsel achieved this result for Galena and Current Galena Stockholders at significant risk to themselves of recovering no fee. Yet Plaintiffs' Counsel did not waver in their dedication to the interests of the Company and its stockholders, and we invested the time and resources necessary to bring the Actions to a successful conclusion.

59. Again, the Fee Award was only negotiated after the Parties completed their settlement negotiations, and it is the product of a "mediator's" made by Judge Phillips that was accepted by the Parties. As set forth in the Stipulation, with the approval of the current Board in

an exercise of its independent business judgment, Galena has agreed to pay the Fee Award based on the substantial benefits conferred upon the Company and Current Galena Stockholders by the Settlement. I respectfully submit that absent the Court's substantial doubt, the Court should defer to the business judgment of the Board,[6] and respectfully, this should end the Court's inquiry as to the "fairness and reasonableness" of the Fee Award.[7]

60. As set forth at length in the Motion, the Fee Award falls below the Ninth Circuit benchmark of 25% of the settlement fund. The total financial benefit to Galena amounts to over $16.3 million. The $5 million agreed-to Fee Award will be paid in addition to, and not out of, the, $16.3 million financial consideration. In the typical monetary settlement, the defendants or its insurance carrier (as is the case here) pay a fund and the court awards fees for the benefit of creating the fund based on a percentage of the entire fund, not the net amount that remains in the fund after the fees are paid. Where the fee is paid on top of a settlement fund, the fee award should be considered as a percentage of the gross sum of the fund ***and*** the fee award, not as a percentage of the fund which represents the net amount to remain with the company. For example, as Vice Chancellor Noble succinctly explained in *In re GSI Commerce, Inc. S'holder Litig*, when the negotiated attorneys' fees are to be paid in addition to the settlement fund, the court will "look at it under what I think is a more traditional fashion where we would add the

[6] "Courts will not substitute their business judgment for that of the directors, but will determine if the directors' decision was, on balance, within a range of reasonableness." *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1386 (Del. 1995).

[7] Plaintiffs' Counsel respectfully submit that the Court's analysis in the Action is quite different than, for example, the class action context, where the real party-in-interest (absent class members), is not the party directly negotiating the fee. In the Action, the beneficiary, the Company is a highly sophisticated party with sophisticated counsel, and it has the ability to (and in fact did) evaluate the Settlement terms, and agreed to an amount that reflects the value of what it received.

attorneys' fees and expenses to the recovery and then use that as the denominator for finding a percentage of fees and expenses." *In re GSI Commerce, Inc. S'holder Litig.*, Consol. C.A. No. 6346-VCN, at 23 (Del. Ch. Nov. 15, 2011) (TRANSCRIPT). Indeed, in *In re Jefferies Group, Inc. S'holders Litig.*, 2015 WL 3540662, at *2 (Del. Ch. June 5, 2015), Chancellor Bouchard rejected defendants' argument that the fee award should be calculated on a net basis and noted that the court "traditionally has granted fee awards in common fund settlements based on a percentage of the gross settlement value" and that defendants "were unable to identify a single case in which this Court made a considered judgment to award a fee based on a percentage of the net recovery that stockholders would receive in a common fund case" *Id; see also*; *In re ArthroCare Corp. S'holder Litig.*, C.A. No. 9313-VCL, Settlement Hearing and Rulings of the Court, at 34 (Del. Ch. Nov. 6, 2014) ("Now I have to factor in that the defendants are paying the fee, which is an additional benefit"); *Frederick v. Range Res.-Appalachia, LLC*, No. 08-288, 2011 WL 1045665, at *8 (W.D. Pa. Mar. 17, 2011) (including "contribution to attorney fees" in calculating total amount of a common fund). In sum, by negotiating the Fee Award in addition to the financial consideration, it is functionally equivalent to a larger all-in settlement fund, *i.e.*, $21.3 million ($16.3 million Settlement consideration plus $5 million Fee Award), where all fees are paid from that gross fund.

61. Accordingly, the $5 million agreed-to Fee Award, which will be paid on top of, not out of the $16.3 million in financial consideration, represents 23% of the total monetary recovery, which is less than the typical 25% award and is therefore presumptively reasonable.

62. The Fee Award is also consistent with past derivative governance-only settlements. *See City of Orlando Police Pension Fund v. Page*, 970 F. Supp. 2d 1022 (N.D. Cal.

2013) (ORDER) ($9.9 million fee); *City of Pontiac Gen. Employees' Ret. Sys. v. Langone*, No. 2006-cv-122302 (Ga. Sup. Ct., Fulton County, Jun. 10, 2008) ($14.5 million fee); *In re Schering-Plough Corp. S'holders Derivative Litig.*, No. 01-1412, 2008 U.S. Dist. LEXIS 2569, at *1 (D.N.J. Jan. 14, 2008) ($9.5 million fee); *In re F5 Networks, Inc. Derivative Litig.*, No. 06-0794 (W.D. Wash.) ($5 million fee award).

63. Other factors utilized by the Ninth Circuit further support approval of the unopposed Fee Award.

The Skill Required and the Quality of Work

64. The skill required by Plaintiffs' Counsel to prosecute and settle the Action and their quality of work are additional factors that support Plaintiffs' Counsel's requested Fee Award. Plaintiffs' Counsel are nationally-recognized law firms that specialize in stockholder derivative litigation. *See* Exhibits A - J (Firm Resumes of Plaintiffs' Counsel).

The Contingent Nature of the Fee and Burdens on Plaintiffs' Counsel

65. When Plaintiffs' Counsel undertook to act for the Plaintiffs in the Action, we were aware that the only way we would be compensated was to achieve a successful result. We respectfully submit that the benefits conferred upon the Company and Current Galena Stockholders via the financial relief and Reforms are clearly valuable to the Company and Current Galena Stockholders. This result was obtained despite the existence of substantial risks and the complicated nature of the Action.

66. We are personally aware of many hard-fought lawsuits where excellent professional efforts of members of the plaintiffs' bar produced no fee for counsel, because of the

discovery of facts unknown when the case commenced, or changes in the law during the pendency of a case, or a decision of a judge or jury following a trial on the merits.

67. Indeed, while The Weiser Firm's (which is a "small" law firm) track record on derivative cases is as good as anyone's in this field, we obviously do not "win" or settle every case we file. In 2009, The Weiser Firm (along with Kessler Topaz Meltzer & Check, LLP, another firm serving as Plaintiffs' Counsel) was part of a trial team that tried a consolidated ERISA class action in the U.S. District Court for the Northern District of Illinois. The case took four years (and substantial expenditures) to litigate and try, and following a trial, the Northern District of Illinois entered a verdict on behalf of the defendants. This type of loss has a significant impact upon law firms the size of the Weiser Firm.

68. Courts have repeatedly held that it serves the public interest to have experienced and able counsel enforce the securities and corporate laws and regulations pertaining to the duties of officers and directors of public companies. Vigorous private enforcement of the federal securities laws and state corporation laws can occur only if private plaintiffs can obtain parity in representation with that available to large corporate interests. The U.S. Supreme Court has long recognized the value of derivative actions. In *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 548 (1949), the Supreme Court stated: "This remedy [derivative actions], born of stockholder helplessness, was long the chief regulator of corporate management and has afforded no small incentive to avoid at least grosser forms of betrayal of stockholders' interests. It is argued, and not without reason, that without it there would be little practical check on such abuses." If this important public policy is to be carried out, courts need to award fees that will

adequately compensate private plaintiffs' counsel, taking into account the enormous risks undertaken with a clear view of the economics of a shareholder derivative action.

Lode-Star Cross Check

69. In sum, Plaintiffs' Counsel has expended a total of 6,105.10 hours and $153,081.02 in unreimbursed expenses litigating the Action. Collectively, Plaintiffs' Counsel lodestar is $3,334,092.75. After subtracting Plaintiffs' Counsel's expenses, the requested Fee Award represents a lodestar multiplier of 1.45.[8] *See* Exhibits K-T.

THE INCENTIVE AWARDS SHOULD BE APPROVED

70. Finally, I respectfully submit that the nominal Incentive Awards in the amount of $5,000 each for Plaintiffs Klein and Rathore (to be allocated from the Fee Award) should be finally approved in light of the significant benefits these Plaintiffs played a role in creating for the Company and all Current Galena Stockholders.

71. As set forth in the Plaintiffs' Motion, Plaintiffs' Counsel believes that, as a matter of both equity and precedent, the Incentive Awards should be approved. But for the active participation of the Plaintiffs, the Company and Current Galena Stockholders would not have benefitted.

72. I respectfully submit that as a matter of policy, engaged, concerned, shareholders such as Plaintiffs in this Action should be encouraged to step forward to prosecute viable shareholder derivative claims in order to provide a check to the conduct of corporate boards, and particularly during periods of financial tumult such as these. Approval of the Incentive Awards would serve this salutary purpose.

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[8] $5,000,000 - $153,081.02 = $4,846,918.98. $4,846,918.98 ÷ $3,334,092.75 = 1.45.

CONCLUSION

73. For the reasons set forth above and in the accompanying Motion, I respectfully submit that the Settlement, the Fee Award, and the Incentive Awards are fair, reasonable, adequate, and should be finally approved.

EXHIBITS

74. Attached hereto as Exhibits A - J are the Firm Resumes of Plaintiffs' Counsel.

75. Attached hereto as Exhibits K – T are the declarations from Plaintiffs' Counsel detailing the time spent and expenses incurred in the Action.

76. Attached hereto as Exhibit U is a true and correct copy of *In re GSI Commerce, Inc. S'holder Litig.*, Consol. C.A. No. 6346-VCN, at 23 (Del. Ch. Nov. 15, 2011) (TRANSCRIPT).

77. Attached hereto as Exhibit V is a true and correct copy of *In re ArthroCare Corp. S'holder Litig.*, C.A. No. 9313-VCL, Settlement Hearing and Rulings of the Court, at 34 (Del. Ch. Nov. 6, 2014) (TRANSCRIPT).

78. Attached hereto as Exhibit W is a true and correct copy of *In re F5 Networks, Inc. Derivative Litig.*, No. 06-0794, Order and Final Judgment (W.D. Wash. Jan. 6, 2011).

79. Attached hereto as Exhibit X is a true and correct copy of *City of Pontiac Gen. Employees' Ret. Sys. v. Langone*, No. 2006-cv-122304, Findings of Fact in Support of Order and Final Judgment (Fulton County, Ga. June 10, 2008).

80. Attached hereto as Exhibit Y is a true and correct copy of *In re Google Inc. S'holder Derivative Litig.*, No. CV-11-04248, Order (N.D. Cal. Jan. 21, 2015).

81. Attached hereto as Exhibit Z is a true and correct copy of *Warner v. Lesar*, No. 2011-09567, Order Approving Settlement and Judgment (Tex. Dist. Ct., Harris Cnty. Oct. 1, 2012) (awarding $7.75 million fee).

82. Attached hereto as Exhibit AA is a true and correct copy of *In re General Motors Corp. Derivative Litig.*, MDL No. 06-1749, Order Approving Settlement (E.D. Mich. Dec. 22, 2008).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 31st day of March, 2016, at Berwyn, Pennsylvania.

s/ Brett D. Stecker
Brett D. Stecker